

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**ANDREW M. SMITH,**

**Plaintiff,**

**v.**

**9:17-CV-1090 (BKS/CFH)**

**DR. RUSSELL FRICKE, *Doctor, Rensselaer County  
Jail,***

**Defendant.**

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**Appearances:**

Andrew M. Smith  
Troy, NY 12180  
Plaintiff, pro se

Molly C. Casey, Esq.  
Thuillez, Ford Law Firm  
20 Corporate Woods Boulevard  
3rd Floor  
Albany, NY 12211  
Attorney for Defendant

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff Andrew Smith, a former inmate at Rensselaer County Jail, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration. (Dkt. No. 4). On February 6, 2018, Defendant filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. (Dkt. No. 16). Plaintiff filed a response on May 16, 2018 (Dkt. No. 20) and Defendant filed a reply on May 29, 2018 (Dkt. No. 22). Plaintiff also filed a supplemental response on June 6, 2018. (Dkt. No. 24). This matter was referred to United States Magistrate Judge Christian F. Hummel who, on June 15, 2018,

issued a Report-Recommendation and Order recommending that Defendant's motion to dismiss be granted and that Plaintiff's amended complaint dismissed without prejudice. Magistrate Judge Hummel advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 28, at 10-11). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation (Dkt. No. 28) is **ADOPTED** in its entirety; and it is further


**ORDERED** that Defendant's motion to dismiss (Dkt. No. 16) is **GRANTED**; and it is further

**ORDERED** that Plaintiff's amended complaint (Dkt. No. 4) is **DISMISSED** in its entirety, without prejudice; and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

**Dated: July 16, 2018**

  
Brenda K. Sannes  
U.S. District Judge